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OFFICE OF PETITIONS

In re Application of	:	
Michel E. Mawad	:	
Application No. 10/755,249	:	DECISION ON PETITION
Filed: January 12, 2004	:	UNDER 37 CFR 1.78(a)(6)
Attorney Docket No. 1366-00901	:	

This is a decision on the petition under 37 CFR § 1.78(a)(6), filed October 14, 2004, to accept an unintentionally delayed claim under 35 U.S.C. §119(e) for the benefit of the prior-filed provisional Application No. 60/439,229, filed January 10, 2003.

The petition is **DISMISSED**.

A petition under 37 CFR 1.78(a)(6) is only applicable to those applications filed on or after November 29, 2000. Further, the petition is appropriate only after expiration of the period specified in 37 CFR 1.78(a)(5)(ii) and must be filed during the pendency of the provisional application. In addition, the petition must be accompanied by:

- (1) the reference to the prior filed provisional application supplied in an application data sheet (ADS)(37 CFR 1.76) or as an amendment in the first sentence of the specification following the title. See 35 U.S.C. §119(e) and 37 CFR 1.78(a)(5)(iii). The Commissioner may require additional information where there is a question whether the delay was unintentional.
- (2) the surcharge set forth in § 1.17(t); and
- (3) a statement that the entire delay between the date the claim was due under 37 CFR 1.78(a)(5)(ii) and the date the claim was filed was unintentional. The Commissioner may require additional information where there is a question whether the delay was unintentional.

The instant petition does not comply with item (1) above.

The amendment submitted concurrently with the instant petition as drafted is unacceptable and, therefore, is not considered a proper reference under 37 CFR 1.78(a)(5)(i) and (a)(5)(iii). In this regard, the amendment is physically part of the instant petition and, as such, does not comply with 37 CFR 1.121, 1.52, or 1.4(c). Note that 37 CFR 1.121 states that amendments are made by filing a paper, in compliance with § 1.52, directing that specified amendments be made. The pertinent section of 37 CFR 1.52 states that the claim (in this case, the claim for priority), must commence on a separate physical sheet. 37 CFR 1.4(c) states that each distinct subject must be contained in a separate paper since different matters may be considered by different branches of the United States Patent and Trademark Office.

Accordingly, before the petition under 37 CFR 1.78(a)(6) can be granted, a renewed petition and a substitute amendment (complying with the provisions of 37 CFR 1.121) is required.

Further correspondence with respect to this matter should be addressed as follows:

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Any inquiries concerning this decision may be directed to Irvin Dingle at (571) 272-3210.



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